

CALIFORNIA COASTAL COMMISSION

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COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-04-013

Applicant.....Anderson Family, c/o Galley Restaurant

AgentSteven Puglisi, AIA

Project locationLease sites 91 – 92 and 91 – 92 West, 899 Embarcadero, City of Morro Bay, San Luis Obispo County, APN 066-322-001. See Exhibit A.

Project description.....The applicant proposes to replace the existing Galley Restaurant and retail shop with a two-story mixed development project that includes three commercial lease spaces on the ground floor, an eight-unit inn on the second floor, eight parking spaces, and public access improvements to and along the bay frontage. The project also involves the replacement of 20 existing support piers with 8 – 14 new piers that will be installed to support the new structure and public access way. The proposed new development will encroach 16 feet further into the Morro Bay estuary than the existing development and is more specifically described as follows:

- 1) Demolition of the existing Galley Restaurant, retail shop, and supporting waterfront structures (i.e., piers) that extend into and over the bay waters;
- 2) Installation of 8 – 14 new concrete piles within the bay to support the new structure and a lateral public access way;
- 3) Construction of 2,050 square feet of commercial lease space, two public restrooms, an elevator, and stairs for a total of 2,500 square feet of ground floor development plus parking area;
- 4) Construction of eight overnight visitor-serving accommodations on the second floor totaling roughly 4,000 square feet and approximately 500 square feet of additional storage area;
- 5) Eight new parking spaces and retention of 5 existing parking spaces for a total of 13 parking spaces (2 ADA accessible);
- 6) Construction of a new eight foot wide lateral public access along the bay frontage with a six foot vertical connection to Embarcadero Road along



California Coastal Commission

December 9, 2004 Meeting

Staff: M. Watson Approved by:

the northern property frontage, an 18' wide view corridor/vertical access connection to Embarcadero Road along the southern property frontage, and a lateral connection to public access amenities fronting the adjacent Otter Rock Café.

Approvals ReceivedConditional approval of a Concept Plan for Conditional Use Permit CUP 25-03R, City of Morro Bay Planning Commission, January 5, 2004; Provisional Letter of Permission (LOP) issued by Army Corp of Engineers, June 28, 2004 (Requires CZM consistency concurrence from CCC).

File documents.....CCC Coastal Development Permit file 3-04-013.

Summary of Staff Recommendation:

On January 5, 2004 the City of Morro Bay conditionally approved a Concept Plan authorizing the redevelopment of the existing Galley Restaurant and retail shop. The proposed project includes demolition of an existing visitor serving commercial structure (restaurant and retail shop) and supporting foundational piers, and construction of a new mixed-use development consisting of commercial lease space on the ground floor and an eight unit visitor serving inn on the second floor. Twenty existing foundation piers will be replaced with 8 - 14 concrete piers. The new development includes roughly 2,500 square feet of commercial lease space, public restrooms, and elevators on the first floor and approximately 4,500 square feet of visitor-serving accommodations and storage on the second level.

As approved by the City, the project includes a 16-foot extension of the existing structure over coastal waters. The proposed extension includes the new mixed use commercial retail / visitor serving building (8') and lateral public accessway (8'). As noted above, the existing concrete encased steel piers will be replaced by 8 - 14 concrete piers, half of which will be aligned beyond the extent of the existing development.

Parking improvements include installation of eight new parking spaces and retention of five existing parking spaces –two of which will be converted to support ADA accessibility, for a total of 13. This includes one parking space for each visitor-serving room and five spaces to comply with the parking requirements for the commercial floor space.

The project will provide new public access opportunities, which are considered a high priority under the Coastal Act. Public access improvements provided by the project will serve to expand lateral public access along 70 feet of bay frontage and represents a critical link within a 300-yard continuous lateral walkway along the bay. The eight-foot wide lateral public access deck will be constructed over the bay on piers. Additionally, vertical access connections along both the north and south property frontages are



proposed that will also serve to open visual corridors to the bay.

Sensitive marine resources found in the area include marine mammals and birds, which are located in or nearby areas proposed for construction activity. Otters and pelicans can be impacted by noise or construction activity. As such, mitigation measures are proposed that include hiring a “monitor” that will be present on the jobsite at all times during construction and have the authority to issue an immediate stop work order should these species be detected within in the project area. Additionally, eelgrass was detected on the lease site seaward of the existing development. The City’s approval requires all activities that disturb the ocean floor (i.e., installation of pilings) to be monitored by a project biologist to ensure that impacts to eelgrass are avoided or minimized.

Replacement pilings will be constructed of pre-poured concrete and shall be driven into the ocean floor to minimize disturbance of benthic organisms. Disturbed sediments will be contained with a flexible skirt surrounding the driven pile. Additionally, material containment measures are proposed to prevent foreign materials (e.g., construction scraps, wood preservatives, concrete, and chemicals, etc.) from entering the harbor and state waters. A construction staging site located near Embarcadero Drive is required to reduce the potential for inadvertent release of fuel, oil, or other construction materials into coastal waters. Brooms, drop cloths, and other absorbent materials are required to be stored on site in order to facilitate clean up and timely response to unplanned hydrocarbon spills.

Surface water runoff will be collected on site, and will be discharged to coastal waters and thus the project has been conditioned to provide adequate water quality controls. An oil-water separator/isolator is required between all drainage water inlets and the City’s storm drain system. In addition, sediment and debris control measures are required to prevent entrainment of these materials in storm water runoff.

Notwithstanding the conditions placed on the conditional approval of the City, additional measures are necessary to ensure the project will be consistent with the coastal resource protection and public access policies of the Coastal Act. Staff therefore recommends that the **Commission approve a revised project with conditions** requiring the Applicant’s to provide Revised Plans, Eelgrass Mitigation, Public Access, and future Shoreline Development Stipulations. These conditions maximize the project’s conformance to the coastal access and resource protection requirements of the Coastal Act by requiring:

- Revised Plans that: specifically identify the number and location of structural pilings to be placed in estuary waters, limit the seaward extent of commercial development to its existing footprint as shown in Exhibit B; show an eight foot lateral access boardwalk along the entire bay frontage and include all vertical and lateral connections to adjacent properties and Embarcadero Road; and submittal of plans for signing and railings;
- Dedication of an eight foot wide lateral public access boardwalk along the entire 70’ width of bay frontage; access shall be open and available for pedestrian and general public use 24 hours each day, 365 days a year for the life of the development;



- Installation of fiberglass grid decking surfaces for the lateral access boardwalk to promote light penetration and reduce loss of eelgrass due to shading impacts;
- Ongoing monitoring of lease site area for eelgrass impacts; require development and implementation of mitigation plan if impacts are discovered; Applicant must participate in coordinated mitigation effort with Harbor District, National Estuary Program, National Marine Fisheries Service.
- A limit on future development seaward of the approved development.

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List of Exhibits

Exhibit A	Regional Location Map and Assessors Parcel Map
Exhibit B	Revised Development Footprint
Exhibit C	Planning Commission Staff Report Findings and Conditions (CUP 25-03R, 1/25/04)
Exhibit D	Tenera Eelgrass Survey Map
Exhibit E	Proposed Site Plans and Elevations
Exhibit F	Comparison of Existing and Computer Aided Site Photos

1. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below.

Motion: *I move that the Commission approve Coastal Development Permit Number 3-04-013 pursuant to the staff recommendation.*

Staff Recommendation of Approval: *Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

Resolution to Approve the Permit: *The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*



2. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit final plans to the Executive Director for review and approval. The Final Plans shall be in substantial conformance with the October 18, 2003 Site Plans, Elevations, and Foundation Plans prepared by Simon and Puglisi Company, which shall be revised and supplemented to comply with the following requirements:
 - a. **Final Site Plans.** Final plans shall show all components of project including:
 1. Commercial development limited to existing commercial development footprint as shown in Exhibit B;
 2. Number and location of piers, beams, grade beams (i.e., foundation plan) in site plan view; plan shall include all reference points such as lease site boundaries, top of bulkhead, approximate waterline, etc.;
 3. All building elevations; plans shall illustrate a maximum depth of 4' for the



second story deck along the western elevation;

4. 8' wide public access boardwalk along the entire width (70') of the lease site, all access connections to Embarcadero Road and adjacent properties; plans shall show the lateral access boardwalk cantilevered over the bay;
5. Parking plan showing all spaces, handicap access, etc.

b. Lighting Plans. The lighting plan shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. All exterior lighting shall be designed and located so that only the intended area is illuminated and off-site glare is prevented. Proposed lighting shall be indicated on site plans and shall be directed downward to prevent glare on adjacent and surrounding areas (i.e., Morro Bay). Lights shall have solid sides and reflectors to further reduce lighting impacts.

2. Eelgrass Mitigation and Monitoring. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, the following eelgrass mitigation and monitoring plan that provides:

- a. Alternative construction materials. Alternative construction materials (e.g., fiberglass grid deck surfacing) shall be used as decking for the lateral public access boardwalk to allow sunlight to penetrate and reduce shading of potential eelgrass habitat. Choice of materials shall be based on the decking product that provides optimum light penetration and shall be accompanied by all methods, analysis, and supporting documentation demonstrating it is the best available technology.
- b. Elevations showing the second floor decking overlooking the bay has been reduced from 8' 6" to a maximum of 4' to reduce shading of potential eelgrass habitat.
- c. Annual Surveys. WITHIN 30 DAYS OF COMPLETION OF CONSTRUCTION OF THE PUBLIC ACCESS BOARDWALK AND ONCE PER YEAR FOR TWO YEARS THEREAFTER, the permittee shall cause an annual survey to be completed by a qualified biologist that will monitor the location and extent of eelgrass beds below and adjacent to the project. The survey shall include a map and written description of the status of eelgrass growing on site and/or an evaluation of the cause of any identified reduction in eelgrass habitat. Surveys shall be submitted to the Executive Director within 30 days of completion for review and evaluation.
- d. Mitigation. WITHIN THREE YEARS AFTER COMPLETION OF CONSTRUCTION OF THE PUBLIC ACCESS BOARDWALK, If monitoring finds that 10% or more of the eelgrass beds have been adversely affected by the project, permittee shall develop and implement a plan, subject to Executive Director review and approval that provides for corrective mitigation measures. Mitigation measures may include contributing to a pilot



project for planting of eelgrass beds in a new location including within or adjacent to the City's Mooring Area 1 eelgrass site, in coordination with the Harbor District, National Estuary Program, Department of Fish and Game, or National Marine Fisheries Service (NMFS). If coordinated corrective mitigation is not possible, the Permittee shall be required to provide individual compensatory mitigation within Morro Bay consistent with NMFS Southern California Eelgrass Mitigation Policy. The Plan shall include at a minimum the location and amount of mitigation, techniques used for planting, timing, monitoring, and minimum success criteria.

3. Public Access. Permittee shall ensure public access components are constructed in conformance with the approved final plans, and all facilities are open to the public concurrent with the opening of the commercial retail and visitor-serving aspects of the project. Additionally:

- a. **Public Access.** The entire eight (8) foot width of the lateral access boardwalk and all vertical access connections shall be open and available for through pedestrian access and general public use 24 hours a day, 365 days a year for the life of the development. Public restroom facilities shall be signed and opened to the public during normal business hours (e.g., 8:00 a.m. – 9:00 p.m.) for the life of the project.
- b. **Lateral Access Connections.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for Executive Director review and approval, plans to connect the lateral public access along the waterfront, by a ramp, deck or other, to adjacent lateral and/or vertical access points in order to provide through public access to and along the public access waterfront boardwalk. The approved connection shall be constructed and opened for public use concurrent with the opening of the commercial retail and visitor-serving aspects of the project.
- c. **Railing Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for Executive Director review and approval, plans that show the proposed railings to be used on public access walkway. Railings shall be designed to maximize views (e.g., using vertical railings spaced sufficiently apart) to allow views of harbor, ocean and dunes across wharf while maintaining pedestrian safety.
- d. **Signage Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for Executive Director review and approval, signage plans. Plans shall identify the location, design and content of any signs and interpretive displays used for illustrative, educational or directional purposes. Signs should be kept relatively small in size, designed in keeping with the maritime character of the area, and placed in locations that avoid disruption of scenic coastal views. Signs should clearly identify that public coastal access is available.

4. Shoreline Development Stipulations. By acceptance of this permit, the Permittee acknowledges



and agrees, on behalf of itself and all successors and assigns that:

- a. **No Further Seaward Encroachment.** No further seaward encroachments by development is permitted on this site.
- b. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term bluff retreat and coastal erosion, tidal scour, wave and storm events, bluff and other geologic instability, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

5. **Compliance with Local Conditions of Approval.** Standard and Special Conditions 1, 9, 14, 16, 19, 24, 25, 26, 27, and 28 approved/required by the City of Morro Bay Conditional Use Permit 25-03R are hereby incorporated as conditions of this permit. (See Exhibit C of this report for a copy of the local conditions of approval). Any revision or amendment of these adopted conditions and mitigation measures shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission as an amendment to this coastal development permit.
6. **Revisions and Amendments.** The Permittee shall undertake development in accordance with the approved final plans identified in Special Conditions 1 - 3. Any proposed changes to the approved final plans (including any changes in building design, public access walks, construction materials or methodology) shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that the change is immaterial or that no amendment is necessary.

3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location & Background



1. Project Location.

Until the mid-1940's, the planning area known as the Embarcadero was relatively undeveloped. Most of the small community of Morro Bay was built on the bluff tops above the tidal flats. During this time, the Department of the Navy initiated a project to construct an amphibious base in Morro Bay. Between 1942 and 1945, the north and south breakwaters at the entrance to the harbor, the two T-piers, and the inner harbor revetment (i.e., bulkhead) were constructed. The existing navigational channel was dredged and the spoils deposited behind the inner harbor revetment to create the *fill* along the Embarcadero. In the late 1940's the Navy base including all waterfront facilities were sold to the County of San Luis Obispo. Buildings began to be constructed on the Embarcadero and various docks and T-piers were occupied by a growing fleet of commercial fishing boats. In 1964, the City of Morro Bay incorporated and assumed jurisdiction over the County's waterfront land and facilities. Trusteeship of the state granted tidelands was also transferred to the City at that time.

The 10,226 square foot site that is the subject of this permit is located on the bayside of the Embarcadero in Morro Bay. (Please see Exhibit A) Morro Bay and the Embarcadero in particular has become *the* major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually. The Embarcadero is now largely developed with a variety of visitor serving (restaurants, gift shops) and coastal related (kayak rental, commercial and recreational fishing services, and icing facilities etc.) land uses. Parcels on the bayside of Embarcadero are leased out to individual lessees by the City that controls these properties through a lease from the State Lands Commission.

2. Project Description and Background.

This site is currently developed with a restaurant and visitor-serving retail establishment. Structural development on the site includes both one and two story buildings, approximately 4,500 square feet of site coverage, and roughly 5,700 square feet of total floor area including the waterfront dining area that extends roughly 24' out over bay waters. The site does not currently include any formal public access.

In November 2003, the City circulated a mitigated negative declaration to redevelop the site with a mixed-use commercial retail / visitor-serving development. The proposal includes the demolition of restaurant and retail buildings, removal/replacement of the structural pilings from the bay, construction of a two story, 7,000 square foot building approximately 25' in height, placement of 8 - 14 new concrete pilings, and a lateral public access boardwalk 8' in width that extends across the entire 70' bayside frontage of the site. The proposed project expands development 16' further out into coastal waters than existing. Installation of eight additional parking spaces will be added to the five already existing for a total of 13 parking spaces. Two parking spaces will be dedicated for ADA compatibility.

The site is located within an area of retained Coastal Commission jurisdiction because it is filled state tidelands and/or open coastal waters and thus requires a Coastal Development Permit from the Commission as well as local planning approval. The City of Morro Bay conditionally approved the



project on January 5, 2004 (CUP 25-03R) subject to a number of conditions. (Please see Exhibit C, City Approvals). The standard of review for new development in the Commission's original jurisdiction area is the Coastal Act, although the certified Morro Bay LCP may also be used as guidance.

B. Issues Discussion

1. Marine Resources

a. Issue

The project involves construction, demolition, and filling activities in the Morro Bay estuary that may result in adverse environmental impacts to marine resources, as well as adversely affect water quality. The project involves the removal of 20 concrete pilings and demolition of existing structures in and over open coastal waters. It also includes construction of an expanded commercial retail/visitor-serving mixed use building and a new public access boardwalk which involves installation of 8 - 14 concrete pilings directly in the Morro Bay estuary.

b. Relevant Regulatory Policy

Coastal Act Section 30230 requires that:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

c. Analysis of Marine Resources and Essential Fish Habitats

Morro Bay is a small estuary of 2,300 acres and is fed by Chorro and Los Osos Creeks, and is protected from the Pacific Ocean by a lengthy sand spit. The estuary is a nursery for many species of invertebrates and fish –some that live as adults in the ocean. The shallow water, eelgrass beds and wetlands provide protected habitat and rich food sources for birds, larvae, and fry. Marine mammals, invertebrates, fish, and seabirds make use of both the aquatic and terrestrial environments provided within the bay.

Though the central and southern portion of the bay still contain fairly large, intact, and thriving eelgrass beds, the main harbor area adjacent to the proposed development site has undergone significant changes that have altered the condition and extent of eelgrass at this location. In addition, development along the Embarcadero has resulted in changes to the historic extent of eelgrass along these shores. The waterfront area has been heavily used by commercial and recreational fishing boats since the opening of the harbor in the mid 1940's. As a result, much of the fringing eelgrass beds and benthic environments that once existed have become fragmented and only remnant patches of eelgrass beds exist in areas where



favorable ambient conditions prevail to support growth. Eelgrass thrives in a very narrow range of environmental conditions including shallow water with minimal turbidity and a mud or sandy substrate with good exposure to sunlight (i.e., minimal shading). A good example of this are the healthy eelgrass beds at the north end of the harbor adjacent to the Duke Energy intake. At this location, there is little development or disturbance of the shallow (i.e., less than 10') intertidal area. Accordingly, water clarity is good and adequate sunlight is available to support colonization and retention of eelgrass. In many instances around the harbor, structures such as buildings, piers, and docks have encroached into this shallow intertidal zone and the eelgrass has retreated.

Birds and Marine Mammals. Marine mammals that have been found in the project area include the Pacific harbor seal (*Phoco vitulina*) and the threatened California sea otter (*Enhydra lutris*). California brown pelicans (*Pelecanus occidentalis californicus*) have also been observed in and around Morro Bay, the harbor, and the project site. Seals and otters feed on fish, clams, worms and other larger invertebrates throughout the estuary.

Typically, short-term noise impacts associated with construction activities are restricted to daylight hours and are not viewed as significantly impacting the physical environment. However, disturbing animals that are listed under the Endangered Species Act or Marine Mammal Protection Act may constitute harassment. Thus, to mitigate for any impacts, the City of Morro Bay conditioned its permit to require an environmental monitor be committed to being on the job site at all times during which the pile driver is in operation. The environmental monitor will have the authority to halt any action that might result in injury or mortality of such wildlife, and will have the authority to employ non-invasive methods to discourage such animals from the area using methods approved by CDFG and USFWS (such as use of hand waving, hand clapping, herding boards, or water hoses). The "otter monitor" will determine when it is safe to resume work after the mammal has left the area. The City's conditions of approval have been incorporated into this permit by Special Condition 5. As conditioned by the City and incorporated into this recommendation, construction of the proposed development will not adversely impact birds and marine mammals and is therefore consistent with Coastal Act Section 30230.

Eelgrass Beds. As shown on Exhibit D, a small patch of eelgrass (approximately 8.1 square feet) is growing in approximately 11 feet of water in the vicinity of the proposed building and boardwalk extension, along the northwestern corner of the lease site. According to Tenera Environmental, the firm hired to survey for eelgrass, the entire patch consisted of 82 stems. More robust eelgrass patches were identified outside the area of proposed development footprint closer to shore and in between buildings, decks, and other floating docks. These patches were in water depths between 3 and 9 feet below the surface and ranged in cover between 65 – 86 square feet. If approved, the proposed mixed-use structure and public access boardwalk would be constructed over the entire mudflat area that the small eelgrass bed is currently occupying. The eelgrass beds in the project vicinity could potentially be impacted by construction activities and/or by the shading of sunlight created by the new development.



Eelgrass (*Zostera marina*) is a marine plant that grows in clear, well-lit, shallow coastal waters and provides shelter and spawning habitat for fish and invertebrates. It is widely recognized as one of the most productive and valuable habitats in shallow marine environments. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth the Essential fish Habitat (EFH) provisions to identify and protect important habitats of federally managed marine and anadromous fish species. Eelgrass beds are considered a Special Aquatic Site (SAS) by the U.S. Army Corps of Engineers, California Department of Fish & Game, U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Eelgrass habitat is regulated under Section 404 of the Clean Water Act and is considered Essential Fish Habitat by the National Marine Fisheries Service.

The proposed project includes expanding the existing footprint of development 16' further seaward than its currently existing position to accommodate additional commercial building space and a lateral access boardwalk. In so doing, the proposed project will cover a small patch of eelgrass growing in the northwest corner of the lease site. In response to concerns from Commission staff that the project had the potential to adversely impact eelgrass, the applicant maintains that the 0.75 square meters (8.1 square feet) of eelgrass on the site is an insignificant amount and therefore, the loss would not result in a significant impact. Commission staff disagrees with this assessment. Although the area of eelgrass loss with any individual project may be relatively small, the cumulative impacts and fragmentation of eelgrass beds may be significant along highly developed shorelines such as Morro Bay. Although there is no data to suggest that eelgrass once colonized the entire western shoreline of the bay, anecdotal evidence suggests it may be true. In virtually all shallow locations along the shoreline where there is minimal disturbance from development and adequate exposure to sunlight, there appears to be eelgrass growing. Are these small fragmented patches remnants from larger continuous beds that once thrived prior to development of the harbor? It is not known. What is known is that eelgrass within the Morro Bay estuary and elsewhere in California is on the decline.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced and restored. The proposed project represents redevelopment of an existing permitted structure in the same general location and footprint as the existing structures but with additional coverage for expanded commercial use and a lateral public access boardwalk. As noted above, shading of eelgrass in the developed harbor and bay is leading to both individual and cumulative adverse impacts on this valuable resource. In this particular instance, the proposed expansion of the mixed use building and public access boardwalk will result in covering or shading of 1,120 square feet of intertidal mudflat and a small bed of eelgrass growing within this area. The Commission could recommend that the Applicant revise the project plans to eliminate the additional coverage, however it is unlikely the Applicant would agree to redevelop the site and provide the proposed public access improvements further landward than what the existing use currently affords. A more amenable position may be to hold the line on commercial development (i.e., to its existing footprint) and allow for a seaward expansion to accommodate the public access improvements. This will limit the extent of seaward expansion to only 8' and coverage/ shading to 560 square feet. Though this would reduce the potential impacts to eelgrass, it still would not be adequate to



fully mitigate or avoid them. It is likely that there would continue to be impacts as the proposed boardwalk would still cover much of the eelgrass identified onsite.

To mitigate the impacts caused by installation of the public access boardwalk and associated shading of bay waters, the Applicants will be required to use translucent decking materials such as fiberglass grid decking. Fiberglass grids are being used elsewhere in an attempt to minimize impacts to eelgrass by allowing light to penetrate through the decking material and reach the eelgrass habitat below. Loss of light is the primary cause of eelgrass retreat in most development involving placement of structures in and over coastal waters. This new technology shows promising results, though the efficacy of fiberglass grids is not yet fully understood. Accordingly, the Applicant will be required to monitor the development site on an annual basis to determine if the fiberglass grid decking is providing light to promote continued growth of the eelgrass at this location or is causing shading impacts that result in further retreat of the eelgrass. If the fiberglass grid technology is not successful, the Applicant will be required to participate in a coordinated corrective mitigation effort or private individual mitigation for eelgrass impacts.

Special Condition 1a requires the Applicant to submit revised plans demonstrating the reduction in building area over coastal waters and limiting building coverage to its current footprint. Additionally, the lateral access boardwalk shall be cantilevered over the bay and limited to 8' in width. The proposed second story deck along the west elevation shall also be reduced from a maximum of 8' 6" in depth to a maximum of four feet. Changes from the plan or cross sections presented in the preliminary plans must be fully documented.

To address impacts from shading by the new public access boardwalk, special condition 2 requires the Applicant to use alternative construction materials such as a fiberglass grid deck surface that will permit a sufficient amount of light to penetrate the surface of the access decking and promote continued eelgrass survival. In addition, special condition 2 will also require the Applicant to annually monitor the location and extent of eelgrass beneath and adjacent to the project. If the monitoring finds that the eelgrass bed has been adversely impacted by the project, the permittee will be required to participate in a coordinated corrective mitigation effort (i.e., restoration) with the Harbor District, National Estuary Program, or National Marine Fisheries Service. If at such a time there is no formal established coordinated mitigation effort, the Applicant will be required to provide a private individual mitigation contribution.

Finally, Offshore of lease site 91 – 92 west, there are pipe segments and debris scattered on sand-mudflat. In its April 9, 2004 report prepared for the Applicant, Tenera Environmental (Tenera) noted a single patch of eelgrass growing offshore and seaward of the existing development in greater than 11 feet of water between the discarded pipe segments. Tenera also observed that eelgrass outside the area of construction was more common closer to shore (i.e., shallower water) and up the slope of the embankment between buildings, decks, and other floating docks. No explanation was given for why eelgrass was not present in greater abundance in the offshore survey area. On May 19, 2004, Tenera prepared an Essential Fish Habitat Eelgrass Mitigation Plan at the request of the Army Corps of



Engineers (ACOE). As part of its recommendation for habitat enhancement, Tenera proposed increasing the vertical relief by redistributing the existing pipe or adding more segments of pipe to promote turbulent flow in the area that would prevent young plants from being buried under an accumulation of silt. In its June 28, 2004, Provisional Letter of Permission (LOP), the ACOE, in addition to requiring coastal zone management concurrence from the California Coastal Commission, also attached special conditions to its LOP that requires the permittee to place additional pipe segments on the bay floor in the area of construction. ACOE claims that the addition of pipe segments will increase sediment deposition that will in turn promote eelgrass colonization and growth. CCC staff experts observed that the rationale given for placement of pipe by the two agencies is based on opposite mechanisms and unless there is a stronger justification for adding artificial structural for habitat enhancement than is in the Tenera report, it cannot be supported. In any case, this permit does not authorize the placement of any additional materials within coastal waters other than those necessary to provide a foundation for the approved structures. If the Applicant wishes to pursue any other development activities including placement of pipe sections and debris in the bay, an application for a Coastal Development Permit or permit amendment may be submitted.

d. Conclusion

As designed and conditioned to avoid and mitigate impacts to eelgrass beds and to minimize disturbance of resident wildlife, no significant disruption of marine resources will result. With the inclusion of mitigation measures designed to prevent adverse impacts from construction activities, and to protect essential fish habitats and resources of the marine environment, the project conforms to the marine resource protection requirements of Coastal Act Sections 30230 and 30233.

2. Fill of Open Coastal Waters

Section 30233 of the Coastal Act allows for fill of open coastal waters and estuaries for the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. The Coastal Act allows such activities where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

a. Relevant Regulatory Policies

Coastal Act Section 30233 provides in part that:

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:



...(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

In addition, the following complementary Coastal Act Section applies:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

b. Analysis of Proposed Project

As described above, the project involves fill in the Morro Bay estuary to construct a new and expanded commercial visitor-serving building and a lateral public access boardwalk that will provide an important link in the plan for continuous shorefront lateral access along a several block stretch of the Embarcadero. The project proposes to remove 20 existing pilings and install 8 - 14 new pilings in the intertidal mudflats seaward of the inner harbor revetment (i.e., bulkhead). The outer row of 4 – 7 pilings will be in the sand mudflat, the inner row of 4 – 7 pilings will be installed in the approximate alignment/orientation currently occupied by the existing outer row of pilings. The new pilings are oriented further seaward to support a 16-foot structural expansion/coverage over coastal waters.

The City of Morro Bay conditioned its permit to include mitigation measures regarding material containment, installation procedures, construction staging, and debris disposal. Pilings will be constructed of pre-poured concrete and driven into place with a pile driver. A flexible skirt will be used to contain disturbed sediments during installation. Heavy duty netting will be installed beneath all work areas to collect construction discards and a floating containment boom will be placed into the bay to capture all debris that falls into the water. Netting and boom will be cleaned daily or as often as necessary to prevent accumulation of debris. All wastes will be disposed of in the appropriate manner. The City's requirements are very similar to the BMPs used by the Commission and are adequate to satisfy the requirements of Coastal Act Section 30231. Special Condition 5 requires that all special conditions of the City's permit be incorporated into the conditions and requirements of this Coastal Development Permit.

With respect to the proposed new fill in the bay, Coastal Act Section 30233(a)(4) does not provide for the placement of fill (i.e., structural pilings) for an expansion of existing commercial visitor-serving uses. It does however make an allowance for the placement of fill for public recreational piers that provide public access and recreational opportunities. As noted above, the proposed project includes a



request for new fill to support an expansion of commercial visitor-serving uses and public access. Though the proposed project includes fill that is not supported by the Coastal Act, it will also result in a net decrease in the number of pilings and a corresponding decrease in fill. In the Marine Resource section above, special conditions were recommended that restricted commercial development to its existing footprint, but did not specify placement or alignment of the structural pilings. Therefore, Special Condition 1a requires the Applicant to identify the number and precise location of the new pilings in site plan view on the lease sites. All reference points such the lease site boundaries, location of revetment, waterline, etc. shall be shown and highlighted. Structural pilings for the new building and lateral access shall be placed in approximately the same location/orientation as the existing piles wherever possible and spaced as far apart as practicable to prevent impacts to potential eelgrass habitat.

d. Conclusion

As conditioned to include the City's conditions of approval as part of the Commission's action on the permit, the potential for any adverse environmental impacts associated will be mitigated. Also, as conditioned to limit new fill for public access purposes only and to require placement of structural pilings in roughly the same location as those to be removed, the project conforms to the open coastal waters standards of Coastal Act Section 30233 of the Coastal Act.

3. Public Access and Recreation

a. Issue

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of the Coastal Act." The proposed project is located seaward of the first through public road and is adjacent to Morro Bay. The project includes new and expanded public access improvements including a new eight foot wide lateral public access boardwalk along the entire 70' width of bay frontage. These public access improvements are intended to improve and increase the visitor-serving uses and recreational opportunities available at this location and provide an important link in the plan for continuous shorefront access along the Embarcadero.

b. Relevant Regulatory Policies

Coastal Act Sections 30210 through 30213, and 30220 specifically protect public access and recreation. In particular:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*



***Section 30211:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

***Section 30213:** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

***Section 30220.** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Additional Coastal Act policies that provide for maximizing public access and recreational opportunities include Section 30251 regarding the protection of scenic views (see Visual Resources finding below).

c. Analysis of Public Access and Recreation

Morro Bay provides public access and recreational opportunities of regional and statewide significance. The project approved by the City includes public access amenities such as a boardwalk, 8' in width along the entire bay frontage of the lease site, an 18' foot wide view corridor/vertical access along the southern property line from Embarcadero to the boardwalk, a 6' wide vertical access along the northern property boundary from Embarcadero to the boardwalk, and public restrooms on the ground floor of the visitor-serving retail building. These amenities further the City's Local Coastal Land Use Plan and Waterfront Master Plan goals of providing lateral public access all along the waterfront from Morro Rock south to Tidelands Park. The proposed project provides lateral continuity between an approximate three-block stretch along the waterfront and triggers access across the adjacent Otter Rock Cafe. It provides an important link in a future segment of the California Coastal Trail, as identified in the Coastal Trail working group report to the Legislature, January 31, 2003.

Technically consistent with the access provisions of the City's certified LCP, the City approval includes both lateral and vertical public access improvements on this filled state tidelands site, but falls short of requiring said improvements as a condition of the permit. Condition 1 of the city's standard conditions indicates that the permit is granted for the project depicted on the plans shown in an exhibit to the staff report and held on file with the Public Services Department. Site development, including all buildings and other features, are required to be located and designed in substantial conformance with the aforementioned exhibit unless otherwise specified in the permit. Granted, the staff report exhibit and submitted plans do identify both lateral and vertical public access improvements as well as public restrooms to be built on site, along with many other structural improvements approved by the City. However, once the permit has been issued, there is no guarantee that the improvements will be constructed, and the access amenities open and protected for public use for the life of the project. And



though it is inferred that the public access improvements are required as mitigation for development impacts, the improvements are not directly linked to (i.e., required by) the conditions of approval. Accordingly, the City approved project cannot be found consistent with the Public Access policies of the Coastal Act.

In order to maximize public access and recreational opportunities and bring the project into conformance with Chapter 3 of the Coastal Act, the project is conditioned to require both the lateral and vertical public improvements identified on the project plans along with a requirement that the accessways be available for pedestrian access and general public use 24 hours a day, 365 days a year. Special Condition 3 requires the access improvements to be constructed in substantial conformance with the submitted plans and be constructed in the first phase of the project. Special Condition 3 also requires that the entire width of the boardwalk be used exclusively for pedestrian access and general public use, 24 hours each and every day, and require signing consistent with Commission/Conservancy standards for public access.

As conditioned, the proposed project is consistent with the access policies of the Coastal Act that require new development to maximize access and specifically to provide vertical and lateral access.

d. Conclusion

As proposed and conditioned by this permit, the project provides and enhances public access opportunities consistent with Coastal Act Sections 30210 - 30213, and 30220. Therefore, as conditioned to ensure that the public access improvements to and along the site are constructed and maintained in perpetuity for pedestrian access and general public use, the proposed project will maximize public access consistent with the public access and recreation policies of the Coastal Act.

4. Visual Resources

a. Issue

The project involves demolition of existing structures, and construction of new structures (including a two story mixed use building and a new lateral public access boardwalk) that may change the visual aspects of the project area.

b. Relevant Regulatory Policies

Coastal Act Section 30251 requires that:

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New



development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Additionally, Coastal Act Section 30253(5) states that:

Section 30253(5). *Where appropriate, protect special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

c. Analysis of Visual Resources

The City of Morro Bay is located on the central coast of California about halfway between San Francisco and Los Angeles. It is a working fishing village situated right in the middle of Estero Bay. The City's certified LCP characterizes the visual resources as "unique" and of "spectacular visual quality," including views of the bay, sandspit, Morro Rock, the Duke Energy Plant, and a picturesque collection of commercial fishing and recreational boats. The LUP describes Morro Rock as "the landmark of the community" and "the most significant visual feature of the area." The visual resource that appears to attract the most public attention in Morro Bay is the developed "harborscape" of the Embarcadero, with its great variety of piers, commercial fishing docks, weathered wooden buildings, retail shops, restaurants and its many different vessels of all descriptions. The Embarcadero is *the* major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually.

The flat site lies between the bay and Embarcadero – a public road. The site is currently developed across most of its entire 70' width with a two-story commercial-retail and restaurant building nearly 22' in height. At this time views to the bay, sandspit, and Morro Rock are available only from inside the Galley Restaurant. However, due to the fact that the site and public viewing points along the Embarcadero are at the same elevation, any structural coverage more than 6' in height would obstruct views across the site to the bay.

The two-story design of the project is somewhat similar in character and is compatible in appearance and scale with the more attractive buildings along Embarcadero. The use of building offsets and articulations in addition to the view corridor between the adjacent building to the south (Otter Rock Café) serves to soften the appearance of the building and break up the mass of the structure.

Construction of the proposed mixed-use building, like the existing building, is sure to obstruct public views over a significant portion of the site, but the new design also includes an 18' wide view corridor to the bay. In addition, the City approved design includes construction of an eight-foot wide lateral public access boardwalk across the entire 70' width of bay frontage. (Please see Exhibit E) The view corridor will provide pedestrians and motorists previously unavailable peeks of the bay and sandspit when traveling along Embarcadero. The boardwalk will provide the public with unobstructed views of



the bay, sandspit, and Morro Rock, and is consistent with the City's policies to provide visual and pedestrian access along the Embarcadero shoreline in all new requests for bayside development. Access to the proposed boardwalk from Embarcadero will be via an existing vertical access sidewalk along the northern frontage of the site and through the 18' view corridor between the Otter Rock Café and Galley Restaurant.

The visual character of the boardwalk decking itself may introduce some visual impacts because the alternative decking materials offer a different look than traditional wooden decking. The decking is similar to traditional decking in that it has a very small profile and thus is not likely to be very visible even from the bay itself. It will definitely be visible to persons walking directly upon it, but any minimal visual or aesthetic intrusions/impacts associated with the alternative decking materials is more than offset by the marine resource protection benefits it offers. And in fact, it may offer pedestrians small glimpses of the bay below. Accordingly, the project is consistent with Section 30251 of the Coastal Act.

d. Conclusion

Coastal Act Policy 30251 requires new development to protect views to and along the shoreline, be visually compatible with the character of the area and, where feasible, to restore and enhance visual quality in visually degraded areas. As discussed in the preceding paragraphs, the proposed project includes a boardwalk across the entire bayside frontage that will provide unobstructed views for the public to and along the Morro Bay shoreline. Additionally, a public view corridor is proposed that will provide peeks to the bay and sandspit and serve to break up the mass of the buildings along the Embarcadero. The design of the proposed project is compatible with the surrounding attractive development along this portion of Embarcadero and will restore visual quality on the currently unattractive site. The project, as conditioned by the City and the Commission herein is, therefore consistent with the policy direction of PRC Section 30251.

5. Water Quality

Section 30231 of the Coastal Act requires that water quality be protected and, if possible enhanced by controlling storm water runoff and minimizing entrainment.

a. Relevant Regulatory Policies

Coastal Act Section 30231 provides:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water



flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

b. Analysis

The site is located immediately adjacent to and over the waters of Morro Bay. Construction activities associated with the development of the site and drainage and run off from the completed project could potentially result in adverse impacts on Morro Bay water quality. In particular, those activities include the demolition of existing waterfront structures (Galley Restaurant, decking, and foundation pilings), construction of the new commercial retail / visitor-serving building, new piling installation and construction of the new lateral access boardwalk. Since the project requires work in, over, and adjacent to open coastal waters, which could lead to potential adverse water quality impacts, the City attached a number of conditions to its permit CUP 25-03R to address this issue. (Please see Conditions 14, 16, 24, 25, and 28, Planning Commission Action on CUP 255-03R, January 5, 2004) These conditions require the following measures to be implemented to ensure that water quality will be adequately protected:

- installation of an oil/water separator at all drainage inlets,
- installation of an outlet structure to address silt and hydrocarbon containment,
- direct all run off to the street rather than the bay,
- the implementation of siltation and sediment control measures during construction,
- avoidance of use of the west side of the site closest to the bay for stockpiling of soil, and cleaning and refueling of equipment,
- on site storage of absorbent materials for use in the event of a fuel spill during construction., training for construction workers in how to contain a spill
- periodic review of the implementation of mitigation measures by a qualified biological monitor
- daily removal and containment of all trash and debris during construction
- use of a floating boom and netting to collect/contain scraps and floatable debris in construction area
- procedures for concrete work to avoid contamination of coastal waters

As project construction will be of limited duration, and construction methods have been conditioned by the City's permit to require use of best management practices to avoid oil spills and construction materials from entering the water, the project is not expected to adversely affect water quality or any other aquatic or marine mammal species. The City's approval of the project also includes incorporation of mitigation measures identified in the approved mitigated negative declaration, adopted as part of the



project, that provide improvements to the existing drainage system on-site, including the use of oil/water separators and sediment traps to ensure that storm water runoff from the parking lot and the rest of the project does not adversely affect water quality in the surrounding bay. In order to fully take advantage of these proposed measures, Special Condition 5 is attached to require that all special conditions of the City's permit be incorporated into the conditions and requirements of this Coastal Development Permit.

c. Conclusion

As conditioned by the City and incorporated into this recommendation, the construction and use of the proposed development will not adversely affect water quality of the bay and is therefore consistent with Coastal Act Section 30231.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

